IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8264 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJKUMAR JAGDISHBHAI PATEL

Versus

CHIEF REVENUE CONTROLLING AUTHORITY

Appearance:

1. Special Civil Application No. 8264 of 2000

MR CJ VIN for Petitioner No. 1

MR KP RAVAL AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 19/02/2002

ORAL JUDGEMENT

Rule. By consent of the advocates, Rule is fixed forthwith. Heard Mr. Vin, learned advocate for the petitioner and Mr. Raval, learned AGP for the

respondents.

2. In this petition, various contentions have raised while challenging the order passed by the Appellate Authority namely Chief Revenue Controlling Authority dated 9th August, 1999 and one of the grounds is that the order is passed by the authority is without any application of mind and also not appreciating the contentions raised in the appeal memo and confirmed the order of the lower authority as well as the order is cyclostyle order. Mr. Vin, learned advocate has while taking me though the petition, order under challenge as well as documents attached thereto the petition, has vehemently urged that the Appellate Authority has dismissed the appeal without appreciating the contentions raised in the appeal and further that the order is mechanically passed, which shows that the authority has not applied his mind while deciding the appeal. It is his submission that the order under challenge is a prepared cyclostyle order and the same is liable to be set aside as the authority has not examine the contentions raised before him and the Appellate Authority has merely confirmed the order passed by the Deputy Collector, Stamp Duty Valuation, Surat. While taking me though the petition and the saledeed, it is the contention of Mr. Vin that the appellant authority has without appreciating the contentions has confirmed the order passed by the lower authority by dismissing the appeal. It is the submission of Mr. Vin that in the present case, where the petitioner has challenged the order of the appellate authority, no reply is filed by the State Authority dealing with the contentions of the petition and the affidavit is filed by Shri Patel, Dy. Collector has not dealt with the contentions raised in the petition, when the petitioner has challenged the order of the Appellate Authority. According to Mr. Vin that the order passed by the Appellate Authority and the order passed by the Dy. Collector deserve to be set aside.

3. Mr. Raval, learned AGP for the respondents has supported the order and it is his contention that as found from the affidavit of Shri Patel, it will be seen that the authority has given ample opportunity to the petitioner to produce documents, which the petitioner rely and when the petitioner has failed to produce such documents in support of his case, the authority has rightly decided the proceedings on appreciating the contentions and the documents, which were before him and even the Appellate Authority has while examining the order under challenge has confirmed the order of the

lower authority by dismissing the appeal. It is his submission that though the order under challenge is a cyclostyle order, it cannot be said that the authority has not applied his mind and accordingly, prayed for dismissal of the petition.

4. On examining the contentions, it transpires that the petitioner has purchased a plot of land for a consideration of Rs.4,99,999/- and considering the value of the plot, he has affixed the stamp on the document namely saledeed. The petitioner is a President of the Society and other persons in the society had also purchased plots of land from the very society and saledeed were executed by paying proper stamp duty. It is the contention of the petitioner that the plots of land purchased by other members in the same society for which, saledeed was presented were cleared, while considering the saledeed of the petitioner, the authority has considered that the value put forward by the petitioner is under valued of the property and accordingly, authority has held that the petitioner was required to pay stamp duty for sum of Rs. 60,000/-. Accordingly, the petitioner was ordered that the petitioner shall affix a deficit court fees of Rs. 35,575/-, the respondent no. 2 had passed the said order on 29th June, 1994. It is this order of the lower authority was challenged by preferring appeal before the appellate authority on several grounds under Section 32(b) of the Bombay Stamp Act and while preferring appeal, he has also annexed the order under challenge and other documents. The petitioner's plot bearing Revenue survey No. 630/2 is situated at Village : Adajan, District Surat bearing TP Scheme No. 10, Final Plot No. 58, Plot No. 3 admeasuring 341.85 sq. Mtrs. The said plot was purchased by him at Rs.4,99,999/- and conveyance deed was executed and registered in the office of the Sub-Registrar of Surat. It is the contention of the petitioner that on the very same day, some other plots of land nearby the plot of the petitioner were purchased under sale deeds of the same area and the same value and the conveyance deed were registered being saledeed Nos. 532 and 537 before the Registrar on 17.1.1991. While clearing the sale deed of the other members, the respondent no. 2 did not found any objections regarding valuation of the plots and the sale deed submitted by the other members were cleared without any objection and the other members have received the original sale deed. However, the Dy. Collector has not cleared the sale deed of the petitioner and authority is of the view that purchase of plot by the petitioner is under valuation for which, the petitioner was asked to pay deficit stamp duty

for Rs.35,575/-. As according to the respondent, the is of Rs.9,52,750/- and the stamp duty affixed by the petitioner is only Rs.60,000/- and therefore, the petitioner was called upon to pay deficit fees of Rs. 35,575/-

5. Being aggrieved by the said decision, the petitioner has preferred appeal before the Appellate Authority by contending that no opportunity was given to the petitioner and further the other sale deeds placed before the authority were identical to the case of the petitioner and the authority has while raising objection that the valuation of the property is undervalued by the petitioner, the authority had illegally directed the petitioner to pay deficit stamp duty of Rs.60,000/- which is illegal. It is the contention in the appeal that the lower authority had not properly considered the case put forward by the petitioner and further that when the sale deed were cleared in respect of other persons, who have purchased the land of some areas of the petitioner as well as of the sale price and the land in question is situated in one society. There is no question that the petitioner had under valued the property and when the authority has cleared the other sale deed, the authority was not legally justified to raise objection that the petitioner has under valued the property and accordingly, the order of pay of deficit fees of Rs.60,000/- is illegal and liable to be set aside.

6. On considering the order under challenge passed by the Appellate Authority dated 9.8.1999, prima-facie it appears that the order under challenge is a cyclostyle order and blanks found in the said order is filled in by the appellate authority by furnishing details namely about the dates and the particulars about the name of the parties and the date of hearing of the appeal. It is further found from the order that the hearing of the appeal was placed before the appellate authority on 9.8.1999 and as found in para 5 of the order, it is not clear from para -5 that whether the appellant or his advocate is remained present or not or whether he has asked for any adjournments. However, by adding ink by writing that the contentions raised in the appeal memo be looked into and the written submissions is made. In para - 6, the appellant authority has recorded a finding by observing that on examining the record and considering the submissions made before me by the advocates and considering the sale deed, no document is produced, for which, he is required to interfere with the order under challenge passed by the Dy. Collector and accordingly, as per order dated 9.8.1999, while dismissing the appeal

of the petitioner, has confirmed the order of the lower authority.

7. On plain reading of the order, more particularly para 6, the appellant authority has not at all recorded any finding independently about the appreciation of the contentions raised before him nor he has recorded any finding in respect of the order under challenge. There is no reference about what documents he has appreciated and in this manner, the appellate authority has disposed of the appeal by confirming the order of the Dy. Collector, Stamp Duty Valuation, Surat.

8. On examining the order in my view, the appellant authority has mechanically passed the order by confirming the order of the lower authority and equally in a prepared cyclostyle order, without appreciating the contentions raised before him and accordingly, the same is liable to be set aside. Accordingly, the petitioner has established his case and the order passed by the Appellate Authority namely the Chief Revenue Controlling Authority dated 9.8.1999 is set aside and the matter is remanded back to the said authority by directing that the appellant authority shall examine the case of the petitioner afresh by giving opportunity to the petitioner and decide the same in accordance with law. Accordingly, Rule is made absolute in above terms. However, there shall be no order as to costs.

(D.K.Trivedi,J.)

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